

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: BRANDAN BRUCE, Petitioner, v. MIDAMERICAN ENERGY COMPANY, Respondent.	DOCKET NO. FCU-03-8 (C-02-287)
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE
AND NOTICE OF HEARING**

(Issued January 22, 2003)

On August 22, 2002, Mr. Brandan Bruce filed an informal complaint with the Utilities Board (Board), identified as Docket No. C-02-287, alleging that MidAmerican Energy Company (MidAmerican) acted improperly with respect to a service line extension to Mr. Bruce's new home south of Milo, Iowa. Mr. Bruce elected to have underground service and paid MidAmerican \$2,472 for the service extension. At the time, Mr. Bruce was the only customer served by the extension. However, another customer has moved to the area and is receiving service. Mr. Bruce alleges that because another customer is now being served because of the extension he paid for, MidAmerican should refund some of the cost of the extension. Mr. Bruce said that the company from which he receives water service, Warren Water, refunded one-half of the cost of its extension when the second customer began receiving service.

MidAmerican responded to the complaint on September 10, 2002.

MidAmerican said that on August 13, 2001, Mr. Bill Schumacher, MidAmerican's distribution customer technician, discussed the refundable and non-refundable options with Mr. Bruce, which are defined in MidAmerican's Electric Tariff Number 1, Original Sheet 39. The first option for a line extension is an advance for construction costs, which is a cash payment, surety bond, or equivalent surety provided by the customer to assist in financing the line extension. This is subject to refund to the customer if and when other customers attach to the line extension. The second option available to a customer for a line extension is a contribution in aid of construction. This is a non-refundable payment by a customer to cover the costs of a line extension in excess of utility-funded allowances. MidAmerican said Mr. Bruce chose the non-refundable option because it had a lower up-front cost.

In April 2002, when a new customer moved nearby and requested service, MidAmerican started at Mr. Bruce's transformer and built a line to the new customer's home. MidAmerican maintained that this new line is not an extension of Mr. Bruce's line, and that Mr. Bruce would not be entitled to a refund even if he had selected the advance for construction option instead of the contribution in aid of construction option.

Mr. Bruce contended that MidAmerican's approach, as contrasted to Warren Water's approach, is unfair to customers paying for extensions, and that the contract offered to him contained only an overhead and an underground option.

On November 15, 2002, the Customer Service Section of the Board issued a proposed resolution that found MidAmerican had followed its tariffs and a refund was not due under the option chosen by Mr. Bruce. On December 3, 2002, Mr. Bruce filed an appeal of the proposed resolution.

The details of these events are contained in informal complaint file number C-02-287, which is incorporated into the record in this case. 199 IAC 6.7.

The Board issued an order dated January 15, 2003, docketing the complaint as a formal complaint proceeding and assigning the case to the undersigned administrative law judge.

Pursuant to Iowa Code § 476.3(1) (2001) and 199 IAC 6.5, a hearing regarding this complaint will be held.

The statutes and rules involved in this case include Iowa Code § 476.3 and Chapter 17A, and Board rules at 199 IAC 1.8, 20.2(2), 20.2(4), 20.3(13), and Chapters 6 and 7. A link to the Iowa Code and the IAC is contained on the Board's website at www.state.ia.us/iub.

The issues

The issues in this case generally involve the costs charged by MidAmerican to Mr. Bruce for the electric service line extension to Mr. Bruce's home south of Milo, Iowa, whether a refund of part of the costs is due, and whether MidAmerican complied with its tariffs and the statutes and rules of the Board. In particular, the issues include whether MidAmerican correctly determined that Mr. Bruce had to pay for the line extension, correctly calculated the costs of the various options in

accordance with its tariffs, Board statutes, and rules and adequately explained those options to Mr. Bruce, whether a written verification should be required, and whether MidAmerican made a proper determination that the line to the new neighbor was not an extension of Mr. Bruce's line. There may be other issues raised by the parties in prefiled testimony.

Prepared testimony and exhibits

All parties will have the opportunity to present and respond to evidence and argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision and order that the undersigned administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3). This

procedure also tends to shorten the length of the hearing and spares the parties the expense and inconvenience of additional hearings.

Mr. Bruce and MidAmerican submitted evidence in the informal complaint stage of this proceeding. The entire informal complaint file is incorporated into the record in this proceeding. The parties may refer to items in the informal complaint file in their testimony, and do not need to resubmit documents previously filed. The informal complaint file is available for examination in the Board Records Center.

In their prepared testimony, the parties must address the issues identified above in this order. In addition, the parties must respond to the following questions in prepared testimony.

Questions for Mr. Bruce.

1. Do you remember whether Mr. Schumacher discussed the refundable and non-refundable options available to you when you met on August 13, 2001?
2. Please discuss what you remember about this meeting and what was said in as much detail as possible.
3. Do you have any notes, letters, emails, calculations of costs, or other written discussion of the meeting prepared at the time of the conversation? If yes, please provide a copy.

Questions for MidAmerican.

1. In his informal complaint, Mr. Bruce alleged that he knew of other customers who received line extensions without paying costs. Please explain how MidAmerican determines whether a customer must pay for a line extension. Explain

how MidAmerican determined or calculated that Mr. Bruce had to pay for the line extension to his home.

2. In the letter dated September 9, 2002, from MidAmerican to Ms. Rosemary Tate, MidAmerican states that Mr. Schumacher and Mr. Bruce met on August 13, 2001, and that the refundable and non-refundable options available to Mr. Bruce were discussed during this meeting. Does Mr. Schumacher or MidAmerican have any contemporaneously prepared notes, letters, emails, calculation of costs, or other written discussion of the conversation? If yes, please provide a copy.

3. Why does MidAmerican believe the meeting took place on August 13, 2001?

4. Please discuss what Mr. Schumacher remembers about this meeting and what was said in as much detail as possible.

5. The following questions assume the four options available were an advance for construction costs for either underground or overhead, or a contribution in aid of construction for either underground or overhead. If this is not correct, please explain the options available to Mr. Bruce in 2001.

a. Please explain exactly how MidAmerican calculated the costs and what Mr. Bruce would have to have paid for each option, including but not limited to how it calculated the construction costs, electric heat credit, charge for pad mount transformer differential, each of the surcharge percentages, and the gross-up amount for the income tax effect. Show all calculations.

b. Testify as to how the costs of these options were explained to Mr. Bruce.

c. Explain how the calculation of costs for each option comply with the requirements of Iowa Code § 476.3 and 199 IAC 20.3(13).

6. Please explain how and when MidAmerican decided that the line to the new neighbor was not an extension of Mr. Bruce's line.

7. In its letter dated September 9, 2002, MidAmerican stated "MidAmerican's Electric Tariff No. 1, Original Sheet No. 49, effective July 15, 1996, states, 'For purposes of the refund, a new customer will only be considered to have 'attached' to a line extension if the electric service connection is attached directly to a point on the extension.' As shown on the map, Mr. Falk's¹ line extension is not attached directly to a point on Mr. Bruce's extension." In the same letter, MidAmerican stated "MidAmerican extended the primary line from Mr. Bruce's transformer" Please explain why attachment to the transformer is not attachment directly to a point on the extension within the meaning of the tariff.

8. If Mr. Bruce were eligible for a refund due to Mr. Falk's line extension, please explain what the refund amount would be and show how the refund would be calculated. Please explain how this amount and calculation comply with 199 IAC 20.3(13) and MidAmerican's tariff.

Party status

¹ Mr. Falk is the new neighbor.

Mr. Bruce, MidAmerican, and the Consumer Advocate Division of the Department of Justice (Consumer Advocate) are currently the parties to this proceeding. Iowa Code §§ 17A.2(8) and 475A.2.

Each party must file an appearance identifying one person upon whom the board may serve all orders, correspondence, or other documents. The written appearance should substantially conform to 199 IAC 2.2(15). It should include the docket number of this case as stated in the caption above. Appearances should be filed at the earliest practical time with the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The appearance should be accompanied by a certificate of service that conforms to 199 IAC 2.2(16) and verifies that a copy of the document was served upon the other parties.

Any party who communicates with the Board should send an original and ten copies of the communication to the Executive Secretary at the address above, accompanied by a certificate of service. One copy of that communication should also be sent at the same time to each of the other parties to this proceeding. These requirements apply, for example, to the filing of an appearance or to the filing of prepared testimony and exhibits with the Board.

These procedures are necessary to comply with Iowa Code § 17A.17, which prohibits ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the contested case. Calls to the Utilities Board to ask about

procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The materials that have been filed in this docket are available for inspection at the Board Records Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records Center at (515) 281-5563. There will be a charge to cover the cost of the copying.

All parties should examine Iowa Code §§ 476.3 and Chapter 17A, and Board rules at 199 IAC 1.8, 20.2(2), 20.2(4), 20.3(13), and Chapters 6 and 7, for substantive and procedural rules that apply to this case.

IT IS THEREFORE ORDERED:

1. On or before February 12, 2003, Mr. Bruce and the Consumer Advocate (if it chooses to file testimony) must file prepared direct testimony and exhibits. The prepared direct testimony may refer to any document already in the record, and parties do not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In prepared testimony and exhibits, Mr. Bruce and the Consumer Advocate must address the issues discussed above, answer the questions asked, and file any other evidence not previously filed.

Mr. Bruce should number his exhibits beginning with Exhibit 1. The Consumer Advocate should number its exhibits beginning with Exhibit 100.

2. On or before March 5, 2003, MidAmerican must file prepared rebuttal testimony and exhibits. MidAmerican may refer to any document already in the record, and does not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In its prepared testimony and exhibits, MidAmerican must address the issues discussed above, answer the questions asked, and file any other evidence not previously filed. MidAmerican should number its exhibits beginning with Exhibit 200.

3. If Mr. Bruce or the Consumer Advocate is going to file prepared rebuttal testimony, it must be filed by March 19, 2003.

4. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa, on April 3, 2003, commencing at 10 a.m. Each party must provide a copy of its prepared testimony and exhibits to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

5. Any party who wishes to file a brief may do so on or before April 10, 2003.

6. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record

of these proceedings. Pursuant to 199 IAC 7.2(6), the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Utilities Board at the earliest possible time.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 22nd day of January, 2003.